

**REMARKS:**

Claims 29-52, and 54-56 are currently pending in the application.

Claims 1-28 and 53 have been previously canceled, without *prejudice*.

Claim 29 stands provisionally rejected under the judicially created doctrine of nonstatutory obviousness-type double patenting.

Claims 29-52 and 54-56 stand rejected under 35 U.S.C. § 103(a) over U.S. Publication No. 2008/0126265 to Livesay et al. (“*Livesay*”) in view of U.S. Patent No. 7,406,436 to Reisman et al. (“*Reisman*”) in further view of U.S. Publication No. 2007/0081197 to Omoigui et al. (“*Omoigui*”).

Applicant notes with thanks the Examiner’s response of 24 March 2010 and the Examiner’s withdrawal of U.S. Patent No. 6,874,141 to Swamy et al. as prior art cited against Claims 29-52 and 54-56.

Applicant further notes that *Reisman* was filed on 21 March 2002. The subject Application was filed on 28 June 2001, ***nine (9) months prior to the filing of Reisman***. It is noted, however, that *Reisman* claims priority to a provisional application filed 22 March 2001. Applicant believes, however, that the Applicant will be able to satisfy the requirements of 37 C.F.R. § 131 by filing a declaration showing a completion of the present invention prior to 22 March 2001, and respectfully reserve Applicant’s right to do so in the future during the pendency of the subject Application. Applicant also believes, however, that the present invention is not disclosed or fairly suggested by *Reisman*, and therefore, traverses the rejection of Claims 29-52 and 54-56 for at least the reasons recited below. However, if the Examiner intends to rely on the filing date of the *Reisman* provisional application, then Applicant respectfully requests that a showing under MPEP 2136.03 be made that “the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph.”

Applicant still further notes that *Omoigui* was filed on 4 August 2006. As noted above, the subject Application was filed on 28 June 2001, ***five (5) years and two (2) months prior to the filing of Omoigui***. It is noted, however, that *Omoigui* is a continuation of an application filed 17 February

2004 which is a continuation-in-part of an application filed on 24 June 2002 which claims priority to two provisional applications filed 28 February 2002 and 22 June 2001. If the Examiner intends to rely on the filing date of the *Omoigui* provisional application filed 22 June 2001, then Applicant respectfully requests that a showing under MPEP 2136.03 be made that “the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph.” Applicant believes, however, that the Applicant will be able to satisfy the requirements of 37 C.F.R § 131 by filing a declaration showing a completion of the present invention prior to 22 June 2001, and respectfully reserve Applicant’s right to do so in the future during the pendency of the subject Application. Applicant also believes, however, that the present invention is not disclosed or fairly suggested by *Omoigui*, and therefore, traverses the rejection of Claims 29-52 and 54-56 for at least the reasons recited below.

Applicant respectfully submits that all of Applicant’s arguments and amendments are without *prejudice* or *disclaimer*. In addition, Applicant has merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, Applicant reserves the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. Applicant further respectfully submits that by not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner’s additional statements. The example distinctions discussed by Applicant are considered sufficient to overcome the Examiner’s rejections. In addition, Applicant reserves the right to pursue broader claims in this Application or through a continuation patent application. No new matter has been added.

## **I. Non-Statutory Double Patenting Rejection**

Claim 29 stands provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 1 of U.S. Patent No. 7,412,404.

U.S. Patent No. 7,412,404 is commonly owned with the subject Application.

Applicant is electronically filing herewith a Terminal Disclaimer for U.S. Patent No. 7,412,404. Applicant respectfully submits that this Terminal Disclaimer obviates the non-statutory

double patenting rejection. Thus, Applicant respectfully requests that the rejection of Claim 29 under the judicially created doctrine of obviousness-type double patenting be withdrawn.

## **II. Rejections Under 35 U.S.C. § 103(a)**

Claims 29-52 and 54-56 stand rejected under 35 U.S.C. § 103(a) over *Livesay* in view of *Reisman* and *Omoigui*.

Applicant respectfully submits that Claims 29-52 and 54-56 in their current form contain unique and novel limitations that are not disclosed by *Livesay*, *Reisman* and *Omoigui*, whether taken individually or in combination. Thus, Applicant respectfully traverses the Examiner's obviousness rejection of Claims 29-52 and 54-56 under 35 U.S.C. § 103(a) over the proposed combination of *Livesay*, *Reisman* and *Omoigui*, whether taken individually or in combination.

In rejecting Claim 29, the Examiner states the following:

Livesay does not go into detail regarding the hierarchy of product within the schemas, however in an analogous art of data mapping/translating, Reisman teaches:

the source schema data and target schema data each comprising a taxonomy comprising a hierarchy of classes into which products are categorized wherein the target schema comprises a different taxonomy than the taxonomy of the source schema (Column 25, lines 48-65, wherein the XML files contain different item structure taxonomy).

at least the source schema further comprising a product ontology associated with one or more of the classes, each product ontology comprising one or more product attributes (Column 25, lines 48-65, wherein the item attributes variation is the ontology criteria).

and associate one or more source classes of the source schema with one or more target classes of the target schema (Column 25, lines 48-65, wherein the item conversion / matching is the association of items (classes) within the XML file).

(24 March 2010 Office Action, pages 5-6). Applicant thanks the Examiner for noting that *Livesay* fails to disclose "receive source schema data and target schema data, the source schema data and the target schema data each comprising a taxonomy comprising a hierarchy of classes into which products are categorized, wherein the target schema data comprises a different taxonomy than the

taxonomy of the source schema data, at least the source schema data further comprising a product ontology associated with one or more of the classes, each product ontology comprising one or more product attributes,” as required by Claim 29.

As discussed above, Applicant believes that *Reisman* is valid prior art. Applicant also believes, however, that the present invention is not disclosed or fairly suggested by *Reisman*. For additional clarification, Applicant respectfully directs the Examiner’s attention to column 25, lines 48-65 of *Reisman*, provided below, on which the Examiner relies:

What is not clearly shown in these samples is the attention that might be given in a preferable embodiment to structure a taxonomy of types and classes that leads to an orderly set of variations in the details of the data such that many of the higher-level data elements would be defined in a consistent fashion so that similar types or classes would have similar elements, and even dissimilar types or classes would share some basic elements. Item class hierarchies may be defined, such as mid-size sport sedan, sedan, automobile, motor vehicle, and major product, with gradations of variation in the data elements corresponding to the hierarchy, so as to simplify handling, and to allow meaningful aggregation of data in higher level groups, such as all Honda vehicles compared to all Mercedes vehicles. Such hierarchies would preferably be defined using XML and emerging tools for managing, converting, matching, and reconciling XML schema as used for other forms of data interchange and interpretation, such as IBM's Visual XML Transformation Tool.

Applicant respectfully submits that the portion of *Reisman* relied on by the Examiner fails to disclose among other things “*at least the source schema data further comprising a product ontology associated with one or more of the classes, each product ontology comprising one or more product attributes*,” as required by Claim 29. By contrast, as shown above, *Reisman* discloses, among other things, item class hierarchies with gradations of variation in the data elements corresponding to the hierarchy. Applicant respectfully submits that this is not analogous to “*at least the source schema data further comprising a product ontology associated with one or more of the classes, each product ontology comprising one or more product attributes*,” as required Claim 29.

In rejecting Claim 29, the Examiner further states the following:

Livesay and Reisman do not go into detail regarding storing product ontology, however in an analogous art of data mapping/translating, Omoigui teaches:

and a storage medium stored therein an ontology generation module configured to generate a product ontology for each of the target classes based on the product ontologies of the associated source classes (Paragraphs [0528]-[0529], wherein ontology mapping table is the storage of ontology association)

(24 March 2010 Office Action, page 6). Applicant thanks the Examiner for noting that *Livesay* and *Reisman* fail to disclose “a storage medium stored therein an ontology generation module configured to generate a product ontology for each of the target classes based on the product ontologies of the associated source classes,” as required by Claim 29. However Applicant respectfully disagrees with the Examiner’s assertion that *Omoigui* provides these missing elements and in fact, respectfully submits that *Omoigui* fails to disclose at least the limitation of Claim 29 of “a storage medium stored therein an ontology generation module configured to generate a product ontology for each of the target classes based on the product ontologies of the associated source classes.”

As discussed above, the subject Application was filed 28 June 2001. *Omoigui* was not filed until 4 August 2006. Therefore, because the filing date of *Omoigui* is after the filing date of the subject Application, *Omoigui* is not valid prior art or even properly citable as prior art.

It is noted, however, that *Omoigui* is a continuation of an application filed 17 February 2004 which is a continuation-in-part of an application filed on 24 June 2002 which claims priority to two provisional applications filed on 28 February 2002 and 22 June 2001. However, the teaching relied upon by the Examiner in rejecting Applicant’s claims under 35 U.S.C. § 103(a) was not part of the provisional of 22 June 2001.

Therefore *Omoigui* is invalid as prior art over the subject Application. In addition, if the Examiner intends to rely on the filing date of the *Omoigui* provisional application filed on 22 June 2001, then Applicant respectfully requests that a showing under MPEP 2136.03 be made that “the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph.”

Furthermore, as mentioned above, the rejections under 35 U.S.C. § 103(a) are moot in view of *Reisman* and *Omoigui* being rejected as prior art. Accordingly, Applicant respectfully

requests that the rejection of Claims 29-52, and 54-56 as obvious over the proposed combination of *Livesay*, *Reisman* and *Omoigui* be withdrawn and Claims 29-52, and 54-56 be allowed.

**III. Office Action Fails to Properly Establish a *Prima Facie* case of Obviousness over the Proposed *Livesay-Reisman-Omoigui* Combination According to the UPSTO Examination Guidelines**

Applicant respectfully submits that the Office Action fails to properly establish a *prima facie* case of obviousness based on the proposed combination of *Livesay*, *Reisman* and *Omoigui*, either individually or in combination, and in particular, the Office Action fails to establish a *prima facie* case of obviousness based on the “Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*” (the “Guidelines”).

As reiterated by the Supreme Court in *KSR International Co. v. Teleflex Inc.* (*KSR*), the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)). Obviousness is a question of law based on underlying factual inquiries. These factual inquiries enunciated by the Court are as follows:

- (1) Determining the scope and content of the prior art;
- (2) Ascertaining the differences between the claimed invention and the prior art; and
- (3) Resolving the level of ordinary skill in the pertinent art.

(Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). Objective evidence relevant to the issue of obviousness must be evaluated by Office personnel. (383 U.S. 17–18, 148 USPQ 467 (1966)). As stated by the Supreme Court in *KSR*, “While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.” (*KSR*, 550 U.S. at \_\_, 82 USPQ2d at 1391).

However, it is important to note that the Guidelines require that Office personnel “*ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied.*” (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). In addition, the Guidelines remind Office personnel that the “*factual findings made by Office personnel are the*

*necessary underpinnings to establish obviousness.”* (*id.*). Further, “*Office personnel must provide an explanation to support an obviousness rejection* under 35 U.S.C. 103. (*id.*). In fact, “35 U.S.C. 132 requires that the applicant be notified of the reasons for the rejection of the claim so that he or she can decide how best to proceed” and “clearly setting forth findings of fact and the rationale(s) to support a rejection in an Office action leads to the prompt resolution of issues pertinent to patentability.” (*id.*).

With respect to the subject application, the Office Action has not shown the *factual findings necessary to establish obviousness* or even *an explanation to support the obviousness rejection* based on the proposed combination of *Livesay, Reisman* and *Omoigui*. The Office Action merely states that “it would have been obvious to a person in the ordinary skill in the art at the time of the invention to combine Livesay and Reisman and Omoigui by incorporating the teaching of Omoigui into the system of Livesay and Reisman.” (24 March 2010 Office Action, page 6). Applicant respectfully disagrees and respectfully submits that the Examiner’s conclusory statement is not sufficient to establish the *factual findings necessary to establish obviousness* and is not a sufficient *explanation to support the obviousness rejection* based on the proposed combination of *Livesay, Reisman* and *Omoigui*. *Applicant respectfully requests that the Examiner provide proper support for the obviousness rejection under 35 U.S.C. 103 as necessitated by the Guidelines, including the factual findings necessary to establish obviousness to “ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied.* (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)).

The Guidelines further provide guidance to Office personnel in “determining the scope and content of the prior art” such as, for example, “Office personnel must first obtain a thorough understanding of the invention disclosed and claimed in the application.” (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). The scope of the claimed invention must be clearly determined by giving the claims the “broadest reasonable interpretation consistent with the specification.” (See *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) and MPEP § 2111.). In addition, the Guidelines state that any “*obviousness rejection should include*, either explicitly or implicitly in view of the prior art applied, *an indication of the level of ordinary skill.*” (Notice, 72 Fed. Reg. 57528 (Oct. 10, 2007)). With respect to the subject Application, the Office Action has not provided *an indication of the level of ordinary skill*. *Applicant respectfully requests that the*

*Examiner provide proper support for the obviousness rejection under 35 U.S.C. 103 as necessitated by the Guidelines, including an indication of the level of ordinary skill, relied upon by the Examiner.* (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)).

The Guidelines still further provide that once the *Graham* factual inquiries are resolved, Office personnel must determine whether the claimed invention would have been obvious to one of ordinary skill in the art. (*Id.*). For example, the Guidelines state that *Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.* (*Id.*). In addition, the Guidelines state that the proper analysis is *whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts.* (*Id.* and See 35 U.S.C. 103(a)).

With respect to the subject Application, the Office Action has not expressly resolved any of the *Graham* factual inquiries to determine whether Applicant's invention would have been obvious to one of ordinary skill in the art. In addition, the Office Action fails to *explain why the difference(s) between the proposed combination of Livesay, Reisman, Omoigui and Applicant's claimed invention would have been obvious to one of ordinary skill in the art.* The Office Action merely states that one "having ordinary skill in the art would have found it motivated to use the product ontology of Omoigui into the system of Livesay and Reisman for the purpose of capturing and storing product relationship in order to augment mapping association of the plurality of schemas." (24 March 2010 Office Action, pages 6-7). Applicant respectfully disagrees and further respectfully requests clarification as to how this statement *explains why the difference(s) between the proposed combination of Livesay, Reisman, Omoigui and Applicant's claimed invention would have been obvious to one of ordinary skill in the art.* Applicant further respectfully submits that the Examiner is using the subject Application as a template to formulate reconstructive hindsight, which constitutes impermissible use of hindsight under 35 U.S.C. § 103(a).

The Guidelines yet further state that the "key to supporting any rejection under 35 U.S.C. 103 is the *clear articulation of the reason(s) why the claimed invention would have been obvious.*" (Notice, 72 Fed. Reg. 57528 (Oct. 10, 2007)). In fact, the Supreme Court in *KSR* noted that "*the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.*" (*id.*). The Court quoting *In re Kahn* (441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)), stated that

“[R]ejections on *obviousness cannot be sustained by mere conclusory statements*; instead, there *must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*” (KSR, 550 U.S. at \_\_, 82 USPQ2d at 1396). The Guidelines provide the following seven rationales:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Applicant respectfully submits that the *Office Action fails to provide any articulation, let alone, clear articulation of the reasons why Applicant’s claimed invention would have been obvious.* For example, the *Examiner has not adequately supported the selection and combination of Livesay, Reisman and Omoigui to render obvious Applicant’s claimed invention.* The Examiner’s unsupported conclusory statements that “it would have been obvious to a person in the ordinary skill in the art at the time of the invention to combine Livesay and Reisman and Omoigui by incorporating the teaching of Omoigui into the system of Livesay and Reisman” and “having ordinary skill in the art would have found it motivated to use the product ontology of Omoigui into the system of Livesay and Reisman for the purpose of capturing and storing product relationship in order to augment mapping association of the plurality of schemas,” *does not adequately provide clear articulation of the reasons why Applicant’s claimed invention would have been obvious.* (24 March 2010 Office Action, pages 6-7). In addition, the Examiner’s unsupported conclusory statement fails to meet any of the Guidelines rationales to render obvious Applicant’s claimed invention.

Thus, if the Examiner continues to maintain the obviousness rejection based on the proposed combination of *Livesay*, *Reisman* and *Omoigui*, **Applicant respectfully requests that the Examiner provide proper support for the obviousness rejection under 35 U.S.C. 103 as necessitated by the Guidelines, including a statement by the Examiner identifying which one of the seven rationales the Examiner is relying on and the proper analysis of that particular rationale, as required by the Guidelines.**

**IV. Applicant's Claims are Patentable over the Proposed *Livesay-Reisman-Omoigui* Combination**

Applicant respectfully submits that Claim 29 is considered patentably distinguishable over the proposed combination of *Livesay*, *Reisman* and *Omoigui*. This being the case, Claims 37, 45, and 54-56 are also considered patentably distinguishable over the proposed combination of *Livesay*, *Reisman* and *Omoigui*, for at least the reasons discussed above in connection with Claim 29.

Dependent Claims 30-36, 38-44, and 46-52 depend from Claims 29, 37, and 45, respectively. As mentioned above, each of Claims 29, 37, and 45 are considered patentably distinguishable over *Livesay*, *Reisman* and *Omoigui*. Thus, dependent Claims 30-36, 38-44, and 46-52 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

Furthermore, as mentioned above, the rejections under 35 U.S.C. § 103(a) are moot in view of *Reisman* and *Omoigui* being rejected as prior art. Thus, for at least the reasons set forth herein, Applicant respectfully submits that Claims 29-52 and 54-56 are not rendered obvious by the proposed combination of *Livesay*, *Reisman* and *Omoigui*. Applicant further respectfully submits that Claims 29-52 and 54-56 are in condition for allowance. Thus, Applicant respectfully requests that the rejection of Claims 29-52 and 54-56 under 35 U.S.C. § 103(a) be withdrawn and that Claims 29-52 and 54-56 be allowed.

**CONCLUSION:**

In view of the foregoing remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

A Terminal Disclaimer to obviate a provisional double patenting rejection is being filed electronically herewith. **The Director is hereby authorized to charge the \$140.00 Terminal Disclaimer fee to Deposit Account No. 500777.** Although Applicant believes no additional fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777.** If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777.**

**Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.**

Respectfully submitted,

24 June 2010

Date

/Steven J. Laureanti/signed

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